

AMENDED IN SENATE JUNE 26, 2007

AMENDED IN ASSEMBLY MAY 2, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 712**

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**Introduced by Assembly Member De Leon**

February 22, 2007

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An act to add Chapter 9.2 (commencing with Section 44299.25) to Part 5 of Division 26 of, and to repeal Sections 44299.27, 44299.28, 44299.29, 44299.31, and 44299.32 of, the Health and Safety Code, relating to air pollution.

### LEGISLATIVE COUNSEL'S DIGEST

AB 712, as amended, De Leon. Off-road solid waste, *composting*, and recycling vehicle clean air program.

Existing law requires the State Air Resources Board to adopt standards and regulations for off-road or nonvehicle engines, and to identify toxic air contaminants and establish airborne toxic control measures for toxic air contaminants.

Existing law requires each operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization.

This bill would require, commencing April 1, ~~2008~~, 2009, a person disposing of solid waste at a disposal facility that is subject to the quarterly fee described above to pay a fee of \$0.50 for each ton of solid waste submitted for disposal at the facility. The operator of the facility would be required to collect the fees and submit the fees to the State Board of Equalization, which would be required to transfer the fees to the Off-Road Solid Waste, *Composting*, and Recycling Vehicle Clean

Air Account, which the bill would establish within the Air Pollution Control Fund.

The bill would require the State Air Resources Board to expend the funds deposited in the account, upon appropriation by the Legislature, to pay an operator of an off-road solid waste, *composting*, and recycling vehicle, as defined, for the operator's eligible actual costs of complying with a specified State Air Resources Board regulation, if adopted, not including costs that have previously been paid with public funds. The California Integrated Waste Management Board would be required to award grants, upon appropriation, for projects that ~~divert organic materials from disposal in order to reduce~~ *demonstrate the commercial viability of producing clean transportation fuels from municipal solid waste and recovered landfill gas as a means of reducing both criteria air pollutants and greenhouse gas emissions from landfills on-road and off-road vehicles*. The State Air Resources Board would be required to report annually to the Legislature on the expenditures from the account and the emission reductions estimated to have been achieved by these expenditures. The provisions of the bill relating to imposition of the fee would be repealed January 1, ~~2015~~ 2016, and the bill would require funds then remaining in the account to be used for certain research and demonstration projects.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The State Air Resources Board identified diesel particulate
- 4 matter as a toxic air contaminant in 1998 and adopted a Diesel
- 5 Risk Reduction Plan in 2000 to reduce particulate matter emissions
- 6 from diesel-fueled engines and vehicles in order to reduce cancer
- 7 risks by 75 percent.
- 8 (b) The State Air Resources Board has proposed the adoption
- 9 of a specific control measure that will require all diesel-fueled
- 10 off-road vehicles, including those used by the solid waste,
- 11 *composting*, and recycling industry, to use prescribed emission
- 12 control strategies to retrofit, replace, or repower existing vehicles
- 13 and engines to reduce particulate matter emissions.

1 (c) It is the goal of this program to ensure the maximum feasible  
2 reduction in both particulate matter and nitrogen oxides emissions.

3 ~~(d) The funding mechanism established by this act is intended~~  
4 ~~to (1) ensure that California benefits immediately from the most~~  
5 ~~effective technologies to reduce both particulate matter and oxides~~  
6 ~~of nitrogen emissions as well as greenhouse gas emissions from~~  
7 ~~solid waste and recycling diesel fueled off-road vehicles, (2)~~  
8 ~~encourage the early implementation of the proposed in-use off-road~~  
9 ~~vehicle control measure by the solid waste and recycling industry;~~  
10 ~~and (3) promote projects that divert organic materials from disposal~~  
11 ~~in order to reduce greenhouse gas emissions from landfills.~~

12 *(d) The funding mechanism established by this act is intended*  
13 *to accomplish all of the following:*

14 *(1) Ensure that California benefits immediately from the most*  
15 *effective technologies to reduce both particulate matter and oxides*  
16 *of nitrogen emissions as well as greenhouse gas emissions from*  
17 *solid waste, composting, and recycling diesel fueled off-road*  
18 *vehicles.*

19 *(2) Encourage the early implementation of the proposed in-use*  
20 *off-road vehicle control measure by the solid waste, composting,*  
21 *and recycling industry.*

22 *(3) Promote projects that demonstrate the commercial viability*  
23 *of producing clean transportation fuels from municipal solid waste*  
24 *and recovered landfill gas as a means of reducing both criteria*  
25 *air pollutants and greenhouse gas emissions from on-road and*  
26 *off-road vehicles.*

27 (e) Given the magnitude of the diesel emission reduction  
28 requirements proposed by the State Air Resources Board and the  
29 need for timely and effective implementation, it is in the public  
30 interest to establish a temporary fee on persons disposing of solid  
31 waste for the sole purpose of reducing emissions from solid waste,  
32 *composting, and recycling diesel-fueled off-road vehicles;*  
33 *promoting the production, distribution, and use of clean nonfossil*  
34 *fuels within California's solid waste and recycling industry; waste,*  
35 *composting, and recycling industry; and reducing greenhouse gas*  
36 *emissions from landfills.*

37 (f) It is the intent of the Legislature that financial assistance be  
38 provided through the fee revenues generated by this act to all public  
39 and private operators of solid waste, *composting, and recycling*

1 diesel-fueled off-road vehicles that are subject to the State Air  
2 Resources Board's proposed off-road vehicle control measure.

3 (g) The imposition of a fee on persons disposing of solid waste  
4 at disposal facilities pursuant to this act would not result in the  
5 imposition of a tax within the meaning of Section 3 of Article  
6 XIII A of the California Constitution, because the amount and  
7 nature of the fee has a fair and reasonable relationship to the  
8 adverse environmental burdens imposed by the operation of  
9 off-road solid waste, *composting*, and recycling vehicles and there  
10 is a sufficient nexus between the fees imposed and the use of those  
11 fees to support programs that reduce the diesel particulate matter  
12 and nitrogen oxides emissions caused by those vehicles.

13 SEC. 2. Chapter 9.2 (commencing with Section 44299.25) is  
14 added to Part 5 of Division 26 of the Health and Safety Code, to  
15 read:

16  
17 CHAPTER 9.2. OFF-ROAD SOLID WASTE, *COMPOSTING*, AND  
18 RECYCLING VEHICLE CLEAN AIR PROGRAM

19  
20 44299.25. For purposes of this chapter, the following  
21 definitions shall apply:

22 (a) "Account" means the Off-Road Solid Waste, *Composting*,  
23 and Recycling Vehicle Clean Air Account established pursuant to  
24 Section 44299.26.

25 (b) "*Composting*" means the controlled biological  
26 decomposition of organic wastes that are source separated from  
27 the municipal waste stream or are separated at a centralized  
28 facility for the purpose of producing compost, as defined in Section  
29 40116 of the Public Resources Code.

30 ~~(b)~~  
31 (c) "Disposal facility" means disposal facility as defined in  
32 Section 40121 of the Public Resources Code.

33 ~~(e)~~  
34 (d) "NO<sub>x</sub>" means oxides of nitrogen.

35 ~~(d) "Off-road solid waste"~~

36 (e) "*Off-road solid waste, composting, and recycling vehicle*"  
37 means an off-highway motor vehicle as defined in Section 38006  
38 of the Vehicle Code that operates with a diesel fueled compression  
39 ignition engine with maximum power of 25 horsepower or greater  
40 that is used for the purpose of transferring, processing or disposing

1 of solid waste, for construction or maintenance activities at a solid  
2 waste facility, or for transferring and processing recyclable *or*  
3 *compostable* materials.

4 ~~(e)~~

5 (f) “Operator of an off-road solid waste, *composting*, and  
6 recycling vehicle” means either of the following:

7 (1) A city, county, city and county, or special district that  
8 operates off-road solid waste, *composting*, and recycling vehicles.

9 (2) An individual, firm, limited liability company, partnership,  
10 private corporation, or nonprofit entity that operates off-road solid  
11 waste, *composting*, and recycling vehicles in the business of  
12 transferring, processing or disposing of solid waste, or transferring  
13 and processing recyclable *or compostable* materials pursuant to a  
14 contract, franchise, license, permit, or other authorization granted  
15 by a public agency.

16 ~~(f)~~

17 (g) “PM” means particulate matter.

18 ~~(g)~~

19 (h) “Recycling” means recycling as defined in Section 40180  
20 of the Public Resources Code.

21 ~~(h)~~

22 (i) “Solid waste” means solid waste as defined in Section 40191  
23 of the Public Resources Code.

24 44299.26. The Off-Road Solid Waste, *Composting*, and  
25 Recycling Vehicle Clean Air Account is hereby established within  
26 the Air Pollution Control Fund, to be administered by the state  
27 board.

28 44299.27. (a) On and after April 1, ~~2008~~ 2009, a person  
29 disposing of solid waste at a disposal facility that is subject to the  
30 requirements of Section 48000 of the Public Resources Code, shall  
31 pay a fee of 50 cents (\$0.50) for each ton of solid waste submitted  
32 for disposal at the solid waste disposal facility.

33 (b) The operator of the solid waste disposal facility shall collect  
34 the fee paid pursuant to subdivision (a) and shall submit the fee to  
35 the State Board of Equalization in a manner consistent with the  
36 manner in which the fee created by Section 48000 of the Public  
37 Resources Code is submitted. For the purposes of this subdivision  
38 “operator” has the same meaning described in Section 40160 of  
39 the Public Resources Code.

1 (c) The State Board of Equalization shall transfer the fees  
2 collected pursuant to this section to the account. All fees collected  
3 by the State Board of Equalization shall be collected and  
4 administered by the State Board of Equalization in a manner  
5 consistent with Part 23 (commencing with Section 45001) of  
6 Division 2 of the Revenue and Taxation Code.

7 (d) The state board shall reduce the fee imposed pursuant to this  
8 section if it determines that projected revenues will exceed  
9 projected demands for payment and shall notify the appropriate  
10 policy committees of the Legislature if the state board projects  
11 that the fee will generate inadequate revenues to meet anticipated  
12 demands for payment.

13 (e) This section shall remain in effect only until January 1, ~~2015~~  
14 ~~2016~~, and as of that date is repealed, unless a later enacted statute,  
15 that is enacted before January 1, ~~2015~~ ~~2016~~, deletes or extends  
16 that date.

17 44299.28. (a) The state board shall expend the funds deposited  
18 in the account, upon appropriation by the Legislature, to assist an  
19 operator of an off-road solid waste, *composting*, and recycling  
20 vehicle in paying for the operator's eligible actual costs of  
21 complying with regulations to reduce diesel PM and criteria air  
22 pollutant emissions from in-use off-road vehicles, contained in  
23 Section 2449 of Title 13 of the California Code of Regulations,  
24 upon the adoption of these regulations, including the operator's  
25 early implementation of these regulations prior to their adoption.  
26 The costs the state board may help pay include, but are not limited  
27 to, any of the following:

28 (1) The reasonable cost of the best available control technology  
29 to reduce diesel PM emissions from off-road solid waste,  
30 *composting*, and recycling vehicles, including the cost of  
31 installation.

32 (2) The reasonable cost of the best available control technology  
33 to reduce NO<sub>x</sub> emissions from off-road solid waste, *composting*,  
34 and recycling vehicles, including the cost of installation.

35 (3) The reasonable cost of purchasing and installing engine  
36 backpressure monitors and similar devices approved by the state  
37 board if required for the safe and effective use of the best available  
38 control technology device on off-road solid waste, *composting*,  
39 and recycling vehicles.

(b) The state board shall, after at least one public hearing, develop and adopt guidelines and an appropriate process for equitably distributing available funds from the account including funding levels for retrofit, repower, replacement, and other best available control technologies to achieve the greatest and most cost-effective levels of PM and NO<sub>x</sub> reductions, and equitably distributing available funds from the account for best available control technologies based on the use of alternative fuels.

(c) The state board shall expend, upon appropriation by the Legislature, no more than 4 percent of the funds deposited each fiscal year in the account for purposes of administering this chapter including those actual and necessary costs incurred by the State Board of Equalization for the collection of the fee authorized by this chapter.

(d) (1) The state board shall transfer an amount not to exceed four million dollars (\$4,000,000) per year from the account to the Integrated Waste Management Account created by Section 48001 of the Public Resources Code.

(2) (A) The California Integrated Waste Management Board shall, upon appropriation by the Legislature from the funds deposited into the Integrated Waste Management Account pursuant to paragraph (1), award grants for projects that ~~divert organic materials from disposal in order to reduce greenhouse gas emissions from landfills.~~

~~(B) Eligible projects include all of the following:~~

~~(i) Compost and mulch programs and market development of these programs.~~

~~(ii) Food waste management programs and market development of these programs.~~

~~(iii) Energy and fuel production, including anaerobic digestion, hydrolysis, and landfill gas to energy. Eligible projects shall not include thermal technologies. demonstrate the commercial viability of producing clean transportation fuels from municipal solid waste and recovered landfill gas as a means of reducing both criteria air pollutants and greenhouse gas emissions from both on-road and off-road vehicles.~~

~~(C)~~

(B) The California Integrated Waste Management Board shall expend no more than 4 percent of the funds transferred to the

1 Integrated Waste Management Account pursuant to paragraph (1)  
2 for administering the program created by this subdivision.

3 (e) This section shall remain in effect only until January 1, ~~2015~~  
4 2016, and as of that date is repealed, unless a later enacted statute,  
5 that is enacted before January 1, ~~2015~~ 2016, deletes or extends  
6 that date.

7 44299.29. (a) The state board shall develop and distribute a  
8 one-page form for the operator of an off-road solid waste,  
9 *composting*, and recycling vehicle to document the actual costs of  
10 the operator for which payment is sought. The state board shall  
11 include with the form, instructions for submitting to the state board  
12 an invoice and documentation to request payment for eligible costs.

13 (b) The state board shall not pay an operator of an off-road solid  
14 waste, *composting*, and recycling vehicle for costs that have  
15 previously been paid with funds awarded by a federal agency, the  
16 state board, a local air pollution control or air quality management  
17 district, or with any other source of public funds for the cost of  
18 deploying, retrofitting, or repowering off-road solid waste,  
19 *composting*, and recycling vehicles with best available control  
20 technologies. When submitting an invoice to the state board, an  
21 operator shall deduct, from the total cost of the best available  
22 control technology, the amount of any costs paid for with public  
23 grant funds awarded to, or previously received by, the operator.

24 (c) To the extent practical, the state board shall make the  
25 payments to an eligible operator within 30 working days of  
26 receiving a complete invoice and required documentation.

27 (d) The state board may adopt regulations to implement this  
28 section.

29 (e) This section shall remain in effect only until January 1, ~~2015~~  
30 2016, and as of that date is repealed, unless a later enacted statute,  
31 that is enacted before January 1, ~~2015~~ 2016, deletes or extends  
32 that date.

33 44299.30. (a) If an operator of an off-road solid waste,  
34 *composting*, and recycling vehicle knowingly submits false  
35 information to the state board concerning the eligibility for the  
36 payment of funds pursuant to this chapter, the state board shall,  
37 within 60 days of making this determination, refer the information  
38 to the Attorney General for investigation and appropriate action  
39 pursuant to the False Claims Act (Article 9 (commencing with



1 Section 12650) of Chapter 6 of Part 2 of Division 3 of the  
2 Government Code).

3 (b) The state board shall keep accurate books, records, and  
4 accounts on all disbursements from the account and may audit  
5 invoices received from operators of off-road solid waste,  
6 *composting*, and recycling vehicles to substantiate that payments  
7 made by the state board are those eligible for payment pursuant  
8 to this chapter.

9 44299.31. (a) Beginning no later than ~~January 1, 2009~~ *April*  
10 *1, 2010*, the state board shall report annually to the Legislature on  
11 the expenditures from the account and the emission reductions  
12 estimated to have been achieved by these expenditures.

13 (b) On or before ~~January 1, 2009~~ *April 1, 2010*, the state board  
14 shall submit to the appropriate policy committees of the Legislature  
15 an assessment of whether the funding program created by this  
16 chapter would be more effectively implemented through air  
17 pollution control districts and air quality management districts in  
18 a manner similar to the Carl Moyer Memorial Air Quality  
19 Standards Attainment Program created by Chapter 9 (commencing  
20 with Section 44275).

21 (c) This section shall remain in effect only until January 1, ~~2015~~  
22 *2016*, and as of that date is repealed, unless a later enacted statute,  
23 that is enacted before January 1, ~~2015~~ *2016*, deletes or extends  
24 that date.

25 44299.32. (a) The program implemented pursuant to this  
26 chapter shall be fully supported from the fees collected pursuant  
27 to Section 44299.27. Notwithstanding the scope of activity  
28 mandated by this chapter, in no event shall this chapter be  
29 interpreted to require services necessitating expenditures in a fiscal  
30 year in excess of the fees, and earnings therefrom, collected  
31 pursuant to Section 44299.27. This chapter shall be implemented  
32 only to the extent that fee revenues generated pursuant to Section  
33 44299.27 are available for expenditure for purposes of this chapter.  
34 The fees collected pursuant to this chapter, and the earnings  
35 therefrom, shall be used solely for the purpose of implementing  
36 this chapter.

37 (b) This section shall remain in effect only until January 1, ~~2015~~  
38 *2016*, and as of that date is repealed, unless a later enacted statute,  
39 that is enacted before January 1, ~~2015~~ *2016*, deletes or extends  
40 that date.

1     44299.33. On and after January 1,~~2015~~ 2016, if any  
2 unexpended funds are available in the account, those funds shall  
3 be expended by the state board for research and demonstration  
4 projects related to innovative technologies to further reduce criteria  
5 air pollutants and greenhouse gas emissions from on-road and  
6 off-road solid waste, *composting*, and recycling vehicles.

O